

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA

22-cr-00109-LJV

v.

NOTICE OF MOTION

PAYTON GENDRON,

Defendant.

MOTION BY:

Anne M. Burger, Sonya A. Zoghlin, MaryBeth Covert, and Julie Brain, attorneys for Payton Gendron.

DATE, TIME & PLACE:

Before the Honorable Lawrence J. Vilardo, United States District Judge, Robert H. Jackson United States Courthouse, 2 Niagara Square, Buffalo, New York, on the papers.

SUPPORTING PAPERS:

Affirmation of Anne M. Burger, Sonya A. Zoghlin, MaryBeth Covert and Julie Brain affirmed on July 15, 2024.

RELIEF REQUESTED:

Order of the Court pursuant to the Jury Selection and Service Act and the Fifth and Sixth Amendments to the U. S. Constitution directing the Clerk of the Court to preserve all jury records related to the Master Jury Wheels from which the Grand Jury was empaneled and from which any petit jury will be empaneled.

Dated: July 15, 2024
Rochester, New York

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UNITED STATES DISTRICT COURT
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22-cr-109-LJV

AFFIRMATION

v.

PAYTON GENDRON,

Defendant.

The undersigned attorneys, affirm, under penalty of perjury, as follows:

On May 14, 2022, our office was assigned to represent Payton Gendron. On February 2, 2024, the Court assigned Ms. Brain pursuant to the W.D.N.Y. CJA Plan. ECF No. 135. Payton Gendron is presently charged in a twenty-seven count indictment with offenses including ten death-penalty-eligible counts of Title 18 U.S.C. §§ 924(c)(1)(A)(iii) and 924(j)(1). ECF No. 6. On January 12, 2024, the government filed its Notice of Intent to Seek the Death Penalty. ECF No. 125.

MOTION TO PRESERVE JURY RECORDS

Prior to the government's Notice, the defense filed a Motion for Access to Jury Selection Records and Materials in order to prepare a challenge to the grand jury venire and to ensure the grand jury that indicted him represents a cross-section of the community as constitutionally required.¹ ECF No. 10. The government responded and the defense has replied. *See* ECF Nos.

¹ These records may also be relevant to a future challenge to the petit jury venire in the case.

17, 18. The Jury Administrator has provided information relating to the format and existence of responsive materials along with estimated timeframes for the materials to be produced. ECF Nos. 169, 184. The Motion remains pending. Payton Gendron seeks an order directing the Clerk of the Court to preserve all records, documents, and materials related to the Master Jury Wheel from which his Grand Jury was empaneled, and from which any petit jury will be empaneled. Such an order is appropriate, and may be necessary, to avoid the scheduled destruction of some of these materials. Counsel for the government has been informed of this Motion and advised that they do not oppose the relief requested.

Under the Jury Plan for this district, the Master Jury Wheel “shall be emptied and refilled at least annually.” Jury Plan for the Western District of New York, 3 (2018). The Plan also requires the Clerk of Court to “retain all jury records and papers compiled” for a given year for a period of “four (4) years after the master jury wheel has been refilled and all persons selected have completed jury service in accordance with 28 U.S.C. § 1868.” *Id.* at 8. However, upon “written order” of the Court the records shall be kept for “a longer retention period.” *Id.*

Payton Gendron was indicted on July 14, 2022, by a Buffalo division grand jury. Assuming that the Master Jury Wheel from which his grand jury was drawn was filled in 2021, the records from that Master Wheel will be disposed of in 2025. In anticipation of any challenges that may be raised while his case is pending, the defense respectfully requests a written order from the Court directing the Clerk of Court to retain all jury records compiled and maintained by the Clerk of Court that pertain to the Master Jury Wheels for the applicable grand and petit juries.

WHEREFORE, for the foregoing reasons, the Court should issue an order directing the Clerk of Court to retain all jury records related to the grand jury or petit jury in Payton Gendron's case and grant such further relief as the Court deems just and proper.

DATED: July 15, 2024
Rochester, New York

Respectfully submitted,

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